**THE HON'BLE SRI JUSTICE C.V.RAMULU**

**W.P.No.122 of 2006 & W.P.No.27815 of 2005**

Dated:19.10.2006

Between
1.K.Ramachandar Goud and another.

.....Petitioners

and

1. The District Collector, Mahaboobnagar District Mahaboobnagar and others

…Respondents

**W.P.No.27815 of 2005**

Between
1.Gundu Krishnaiah and another

… Petitioners

and

1. 1. The District Collector, Mahaboobnagar District Mahaboobnagar and others

**THE HON'BLE SRI JUSTICE C.V.RAMULU**

**W.P.No.122 of 2006 & W.P.No.27815 of 2005**

**COMMON ORDER:**

Common questions of fact and law arise for consideration in these two writ petitions, therefore, they are being disposed of by this common order.

In both these cases, the petitioners were elected as members of Ward No.3 and Ward No.5 of Water Users Associations of Nallacheruvu, Gunmukla, Dhanwad Mandal, and Pedda cheruvu, Manthangod village, Mukthal Mandal, Mahaboobnagar District respectively, pursuant to the elections held on 25.4.2005. The question that arises for consideration is as to whether the term of members of the territorial constituency shall be from the date of appointment of the first managing committee or from the date when general notification was issued by the Commissioner i.e., on 12.4.2005.

The facts which are not in dispute are that the Commissioner had issued a notification for election of members of Water Users Association in 13

districts in A.P. Gazette No.412, dated 6.10.2003 and elections were conducted during October, 2003. The Commissioner has notified 1.1.2004 as the date of first meeting for all the Water User Associations in the notification as per sub Section (3) of Section 4 of A.P. Farmers Management of Irrigation Systems Act, 1997 (for short “the Act”). However, elections could not be conducted, as per schedule, in some parts of Mahaboobnagar district including the Water Users Association, Nallacheruvu and Pedda cheruvu, which are subject matter of these writ petitions and also about 150 Water User Associations in the State due to various reasons. Therefore, election to the Water Users Association of the petitioners was re-notified on 12-4-2005, elections were held on 25-4-2005 and the petitioners were elected as members of the territorial constituencies.

It is asserted by the petitioners that they are entitled to continue as members of the Association from 25.4.2005 and six years term as contemplated under Sub Section (3) of Section 4 of the Act,

commences from 25.4.2005, whereas it is the case of the respondents that in view of the notification issued, the Commissioner has notified 1.1.2004 as the date of first meeting under sub Section ( 3) of Section 4 of the Act, as such it must be deemed that the functioning of the association has already been commenced from 1.1.2004 and even if the petitioners are elected in view of a subsequent notification dated 12.4.2005 and elections were held on 25.4.2005, their term of office starts from 1.1.2004. The stand taken by the respondents is absurd. It is not supported by any of the provisions of law. Though in the counter it is asserted that such power is traceable to sub Section (3) of Section 4 of the Act, a plain reading of the said Section does not indicate such meaning. Sub Section (3) of Section 4 of the Act reads as under:

> "The term of office of the members of the Territorial Constituencies shall, if not recalled or removed or disqualified under the provisions of the Act, shall be six years from the date of first meeting of the Managing committee appointed by the Commissioner"
>
> Provided that at the first election, all the

Territorial Constituency members shall be elected at one time, out of which one third of the membes thereof shall retire as soon as may be on the completion of two years, another one third members shall retire after completion of four years and the remaining one third shall retire after completion of six years in office and their terms of retirement shall be decided by drawal of lots."

Rule 35 of the Andhra Pradesh Farmers Management of Irrigation Systems (conduct of Elections) Rules, 2003, reads as under:

"The managing Committees of Water Users Associations being continuous bodies, the following procedure shall be adopted for fixing the tenure of members of Territorial Constituencies. However, this exercise is limited to the first election only.

(a)the members of the Territorial Constituencies elected for the first time will have different tenures ie., 1/3$^{rd}$ of the members will have two years term, another 1/3$^{rd}$ members will have four years term and the remaining 1/3$^{rd}$ members will have six years term.

(b)After the election of members of Territorial Constituencies, to decide their individual

tenure, lots shall be drawn before the conduct of election to the post of President and Vice President is taken up and shall be recorded in Form –14A or Form-14B, as the case may be.

( c )All members of Territorial Constituencies elected in the ordinary elections held subsequently, shall have tenure of six years uniformly as per the provisions of the Act."

From the above, it can be construed that particular date notified by the Commissioner should be taken into consideration for the purpose of commencement of period of elected body from 1.1.2004. Further, Section 4 of the Act read with Rule 35 of the Rules would further make it clear that the term of office of an elected body would be 6 years from the date of election and not from 1.1.2004 as contended by the respondents. This is true that the Commissioner with a hope that the elections would be conducted in the month of October 2003, has fixed the date as 1.1.2004 for the commencement of the period of office of the elected members. In this case, admittedly, no elections were conducted on the date fixed and for the first

time the elections were conducted only on 25.4.2005. Therefore, it must be construed that the period of office of elected members (petitioners herein) for their respective two Water Users Association has commenced from 25.4.2005. The date fixed by the commissioner as 1.1.2004 has no relevance for the purpose of these associations since re-notification was already given for the purpose of elections.

Yet another question that arises for consideration is as to whether lots drawn to the elected territorial committee members would be for first two years, and four years and six years.

Rule 35 (b) is very clear and shows that after the election of members of Territorial Constituencies, to decide their individual tenure, lots shall be drawn before the conduct of election to the post of President and Vice President and shall be recorded in Form-14A or Form 14-B, as the case may be.

Admittedly, in this case, no drawal of lots were taken place for the purpose of deciding the tenure

of the elected members in 6 years period. Insofar as Pedda cheruvu Water Users Association is concerned, lots were drawn and they are governed by the Rules. Insofar as Nallacheruvu Water Users Association is concerned, the authorities are directed to conduct drawal of lots for the purpose of fixing the period of tenure of each member of the territorial committee on or before 31st December, 2006 and communicate the same to all the members as per law.

Further, the learned Government Pleader strenuously contended that the writ petitions are not maintainable in this shape. There is an effective remedy by way of election dispute as per Rules 148 and 149 of the Rules. It is unfortunate that such stand is taken. There is no dispute as to the election of petitioners as members of the territorial constituencies. The question involved in these two writ petitions is regarding the term for which the petitioners are entitled for being continued as territorial members. In the absence of any law, the Commissioner was not justified in

saying that by a general notification he has taken the date of commencement of the committee as 1.1.2004, as no election was conducted in October, 2003. Since no election dispute arises for consideration herein, I am of the opinion, that these writ petitions, in this shape, are maintainable.

In the result, both the writ petitions are allowed accordingly. No costs.

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19-10-2006

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